IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. NO. 160 OF 2007

DATE OF DECISION: January 16, 2007.

Parties Name

Smt. Rashami Malhotra

..APPELLANT

VERSUS

Shanti Devi and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE BALDEV SINGH

PRESENT: Mr. Sudhir Paruthi,
Advocate, for the appellant.

JASBIR SINGH, J. (oral)

Order.

Appellant is owner of the offending vehicle, which had caused an accident on May 18, 2003, in which Shashi Bala daughter of respondent No. 1 had died. On appraisal of evidence, the Tribunal has come to a conclusion that the accident was caused on account of rash and negligent driving by Tractor bearing No. PB 08AD 3353 on the fateful day. The finding in that regard reads thus:

> "21. I find force in the arguments of learned counsel for the claimants. The claimants have proved that the accident was caused by the respondent Mandeep Singh while driving tractor/trolly bearing No. PB-08-AD-3353 rashly and negligently on 18.5.2003. PW-2 Balwinder Kumar is an eye

witness of the accident and he has clearly deposed that on 18.5.2003, he alongwith Buta Ram and Shashi daughter of Chaman Lal were coming back from Bhargav Camp, Jalandhar in a Auto Rickshaw/Three Wheeler bearing No. PND-9734 and when they reached Dhaba, Model House Road, Jalandhar, the tractor/trolly in question which was being driven rashly and negligently came at fast speed and struck against the three wheeler and the three wheeler turned turtle and Shashti daughter of Chaman Lal died. The FIR Ext. P-1 was registered at the instance of Buta Ram. The respondent Mandeep Singh in his cross-examination admitted that the FIR was registered against him regarding this accident bearing No. 152 dated 19.5.2003 under section 304-A IPC at P.S. Division No. 6, Jalandhar. He further admitted that he did not file any application for cancellation of FIR registered against him in this case nor the owner of tractor/trolly moved any application in this respect. Thus the claimants have proved that the accident was caused by the respondent Mandeep Singh while driving tractor/trolly No. PB-08-AD-3353 rashly and negligently on 18.5.2003 in the jurisdiction of P.S. Division No. 6 Jalandhar.

22.The arguments that it was a case of contributory negligence, does not cut much ice because as per the oral statement of respondent Mandeep Singh, there is no evidence to prove the same. Statement of RW-2 Reshmi Malhotra is all hearsay evidence as she was not present at the time of accident. She also admitted that the case was registered against the driver of

tractor/trolly qua this accident and she got the vehicle on Sapurdari from the Court. She herself had not seen the accident. The driver of auto rickshaw was not medically examined for consumption of liquor. She further stated that she cannot produce the original compromise effected qua the accident as the same is lying with the P.S. Division No. 6 Jalandhar. Thus the respondents have failed to prove that the Driver of auto rickshaw was drunk nor the original compromise was produced and the mere photocopy is not sufficient to prove the agreement Ext. R-2. Thus the respondents have failed to prove the contributory negligence or the compromise. The respondent, Mandeep Singh was responsible for the accident. Reliance can be placed on the authorities relied upon by the learned counsel for the claimants above mentioned. The respondent, Mandeep Singh has failed to bring on record any driving licence on the date of accident. The licence Ext. R-1/1 was issued on 15.9.2003 which is valid upto on 14.9.2023. Thus on 18.5.2003, the respondent No. 1 was not holding any driving licence. The authorities relied upon by the learned counsel for the insurance company Balbir Singh vs. Nikka Ram and others (Supra), Bontu Venkata Rao and another vs. Kalla Venkataramana and another (supra) and Manoj Vs. Samunder Singh and others (supra) are not applicable in view of the law laid down by the Hon'ble Supreme Court of India in case New India Assurance Co. Ltd. Vs. Kamla and others (supra) wherein it has been held that even if a person is holding a fake licence then also insurance company shall be liable but it can recover

compensation amount if paid, from the insured. In case National Insurance Company Ltd. Vs. Savitri Devi & others (supra), the Hon'ble Supreme Court of India has held that even if driver of the offending vehicle is not holding valid and effective driving licence, the insurance company is liable to pay the award amount through it can recover the same, from the owner/insured. Holding of fake licence is as good as no licence in the eyes of law, therefore, the respondent insurance company is liable to pay compensation to the claimants and if the insurance company pays the same, it can recover the same from the respondents No. 1 and 2. The plea of the respondent No. 2 that she checked the driving licence when the respondent No. 1 was employed and her statement, is without any basis because on the date of accident, the respondent No. 1 was not holding a valid driving licence. Therefore, there cannot be any driving licence with him. The claimant Shanti Devi is mother of the deceased and she is entitled to claim compensation from the respondents who are the driver, owner and the insurance company of the offending vehicle vide policy Ext. R-1."

At the time of arguments, nothing has been shown to the contrary, which may impress us to interfere in the findings, quoted above.

So far as payment of compensation, on the basis of agreement Ex. R-2 is concerned, it has been found, as a matter of fact that the original of the said agreement was not brought on record and the claimants had denied execution of the said agreement. Age of the deceased was 18 years and compensation amount of Rs. 1,72,800/- appears to be reasonable.

No case is made out for interference. Dismissed.

(Jasbir Singh)
Judge

(Baldev Singh)
Judge

January 16, 2007.
DKC